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IN THE
Supreme Court of the United States.

No. 292 Misc.

October Term, 1948.

GEORGE E. HICKMAN, AS ADMINISTRATOR OF THE
ESTATE OF NORMAN E. HICKMAN, DECEASED,
Petitioner,

v.

JOHN M. TAYLOR AND GEORGE H. ANDERSON, INDIVIDUALLY AND TRADING AS TAYLOR & ANDERSON TOWING AND LIGHTERAGE COMPANY,

and

BALTIMORE & OHIO RAILROAD CO.,

Respondents.

ANSWER TO PETITION FOR WRIT OF
CERTIORARI.

QUESTION PRESENTED.

Under the Jones Act (46 U. S. C. 688), does the measure of damages include any punitive award for the value of a life after death in addition to the compensatory awards for pecuniary loss and for pain and suffering?

ARGUMENT.**Damages Under the Jones Act Are Confined to the Decedent's Personal Loss and Suffering Before He Died and to the Pecuniary Loss to Beneficiaries Through His Death.**

This is the applicable language of the United States Supreme Court in *St. Louis, Iron Mountain & Southern Rwy. Co. v. Craft*, 237 U. S. 648 (1915). It is the rule which has been applied for thirty-four years without exception. It is the rule which the Petitioner desires to nullify by the award of damages for loss of economic value after the death of the deceased, independent of and in addition to pecuniary loss to beneficiaries.

Counsel has only to quote the United States Supreme Court in the *St. Louis* case to establish that the applicable Jones Act rule denies any recovery except compensation for pecuniary loss prior to death (p. 658):

"... it means that the right existing in the injured person at his death—a right covering his loss and suffering while he lived but taking no account of his premature death or of what he would have earned or accomplished in the natural span of life—shall survive to his personal representative to the end that it may be enforced and the proceeds paid to the relatives indicated. And when this provision and § 1 are read together the conclusion is unavoidable that the personal representative is to recover on behalf of the designated beneficiaries, not only such damages as will compensate them for their own pecuniary loss, but also such damages as will be reasonably compensatory for the loss and suffering of the injured person while he lived. Although originating in the same wrongful act or neglect, the two claims are quite distinct, no part of either being embraced in the other. One is for the wrong to the injured person and is confined to his personal loss and suffering before he died, while the other

is for the wrong to the beneficiaries and is confined to their pecuniary loss through his death." (Emphasis ours.)

Petitioner proclaims contra that the legal representatives of an immediately deceased seaman should recover under the Jones Act and its incorporated Federal Employers' Liability Act an additional sum equal to the deceased's life expectancy times his annual gross earnings. Petitioner must admit that the *St. Louis* case was the first interpretative statement of the United States Supreme Court on the effectiveness and extent of the provisions of the Federal Employers' Liability Act, and that it has never been overruled or even attacked and has been regularly applied.

- (a) *The St. Louis doctrine has been re-affirmed repeatedly and applied by the United States Supreme Court, the United States Courts of Appeals and by the state courts interpreting the federal death statutes.*

Apparently the Petitioner feels that by characterizing the *St. Louis* decision as dictum, it was unnecessary to refer to the tremendous body of law interpreting the federal death statutes. Even if we assume that the *St. Louis* case has no value, it seems cavalier to ignore all of the judicial thought which has consistently held that the Federal Employers' Liability Act and the Jones Act limit damages to compensation to specifically named beneficiaries for pain and suffering and intermediate damages between accident and death.

In the year following the *St. Louis* case, the United States Supreme Court re-affirmed and clarified the application of the damage provisions of the Federal Employers' Liability Act in *Great Northern Rwy. Co. v. Capital Trust Company, Adm. of Ward*, 242 U. S. 144. This decision applies itself particularly to the situation where there is no measurable continuation of life after the accident. The trial judge in the Minnesota State Court had

charged the jury in the following language which the Supreme Court found reversible:

"And if you should find from the evidence that Ward did not die instantly from his injuries but that he lived some little time after he was injured, then, under the law, the plaintiff would be entitled to recover damages in the same amount that Ward, the deceased, would have been entitled to recover had he brought the action in his life time. That is, you can award such damages as in your judgment would be a full, fair and reasonable compensation for the loss sustained by Ward, the deceased, by reason of the injuries he received."

After referring to its decision in the *St. Louis* case, the Supreme Court stated (p. 147):

"The present record presents the very circumstances which we declared afforded no basis for an estimation or award of damages in addition to the beneficiary's pecuniary loss. And although apparently not challenged in the State Supreme Court and therefore not now to be relied on as ground for reversal (*Harding v. Illinois*, 196 U. S. 78, 87, 88), in view of a possible new trial, it seems proper to point out that the method approved by the trial court for estimating damages where the deceased's cause of action does survive conflicts with the rule sanctioned by us in the *Craft Case*."

Here certainly was a flat decision that there can be no recovery of any sum except pecuniary loss (not even pain and suffering) where death was instantaneous. To deprecate this decision is to disregard a clear enunciation of the applicable measure of damages. The absence of other rulings is ample proof that the doctrine set forth has been understood and applied.

In three clear decisions, the United States Supreme Court interpreted the Federal Employers' Liability Act to

establish there could be no recovery even for pain and suffering where death was instantaneous as here. In *Carolina, Clinchfield & Ohio Rwy. v. W. N. Shewalter, Adm'r.*, 128 Tenn. 363, 386, the Supreme Court of Tennessee was affirmed, Per Curiam, (239 U. S. 630, 1915) in holding:

"As we have observed, the amendment of 1910 deals with an action that has accrued. No action accrues to an employee where death is instantaneous, and consequently no action survives."

Norfolk & Western Rwy. Company v. Holbrook, 235 U. S. 625 (1915); *Kansas City Southern Rwy. Company v. Leslie, Adm. of Old*, 238 U. S. 599 (1915). See also re drowning as instantaneous death: *The City of Rome*, 48 F. 2d 333; *Fike et al. v. Peters et al.*, 52 P. 2d 700 (1935); *Moyer v. Oshkosh*, 139 N. W. 378 (Wisconsin, 1913).

At the risk of redundancy, it should be pointed out that the United States Courts of Appeals have consistently limited recovery to pecuniary benefits to dependents and to an intermediate award for pain and suffering and loss even where the accident and death were not simultaneous. *Kunschman v. United States et al.*, 54 F. 2d 987 (CCA 2d, 1932); *Chesapeake & O. Ry. Co. v. Mears*, 64 F. 2d 291; 70 F. 2d 490 (CCA 4th, 1933), Certiorari denied, 293 U. S. 557; *Chicago, B. & Q. R. Co. v. Kelley*, 74 F. 2d 80 (CCA 8th, 1934); *Thompson v. Camp*, 163 F. 2d 396 (CCA 6th, 1947), certiorari denied, 333 U. S. 831 (1948).

The state appellate courts have unanimously held in those cases where the Federal Employers' Liability Act and the Jones Act had jurisdiction, that the federal acts superseded their own state death statutes and the federal rule of the *St. Louis* and *Great Northern* cases was applicable, even when in contradiction to the local state interpretation of state death statutes. The state courts have unanimously allowed no recovery of damages for any value of life after death. *Dooley v. Seaboard, Air Line Ry. Co.*, 79 S. E. 970 (N. C. 1913); *Lynch's Adm'r. v. Central Vt. Ry. Co.*, 95 Atl.

683 (Vermont, 1915); *Jorgenson v. Grand Rapids & I. Ry. Co.*, 155 N. W. 535 (Michigan, 1915); *Tobin v. Bruce et al.*, 162 N. W. 933, (South Dakota, 1917); *Louisville & N. R. Co. v. Porter*, 87 So. 288 (Alabama, 1920); *Thornhill v. Davis*, 113 S. E. 370 (South Carolina, 1922); *Sibilia's Estate*, 279 Pa. 459 (1924); *Cobia v. Atlantic Coast Line R. Co.*, 125 S. E. 18 (North Carolina, 1924); *Mobile & O. R. Co. v. Williams*, 121 So. 722 (Alabama, 1929); *Louisville & N. R. Co. v. Jolly's Adm'x.*, 235 W. 2d 564, (Kentucky, 1930); *Ill. Cent. R. Co. v. Humphries*, 164 So. 22 (Mississippi, 1935); *Anelich v. The Arizona et al.*, 49 P. 2d 3, (Washington, 1935) affirmed, 298 U. S. 110 (1936); *Edwards v. So. Ry. Co.*, 184 S. E. 370 (Georgia, 1936).

- (b) *Under statutory construction rules, Congress in 1920 necessarily incorporated the St. Louis interpretation of 1915 in the Jones Act.*

Petitioner has appealed to history and Congressional intent. The Petitioner goes back to quote language from the reports of the Congressional Committee considering the amendment of 1910. It does not follow that Congress in 1920 intended a death statute other than as interpreted in the *St. Louis* and *Great Northern* cases. Petitioner ignores completely the fact that these cases were decided by the United States Supreme Court in 1915 and 1916 and the Jones Act was passed in 1920 incorporating the provisions of the 1908 and 1910 acts.

By any rule of statutory construction, after judicial interpretation of a statute where the legislature does not amend the act, it must be assumed that the construction placed upon it by the court correctly represents the legislative understanding of the intended meaning of the statute and its desired effect. This is particularly true where the legislative action not only failed to amend after the *St. Louis* case construction, but five years thereafter incor-

porated the interpreted statute in the new Jones Act of 1920.

The fact that Petitioner's appeal should be directed to the legislature rather than the judiciary was recognized by the Court of Appeals for the Third Circuit, which, after citing cases accepting the *St. Louis* decision as a correct delineation of the law promulgated in the federal statutes, stated: (page 3 of opinion filed October 18, 1948)

"Any change in what has come to be regarded as a fixed rule of interpretation would now be a matter for legislative consideration."

WHEREFORE it is respectfully submitted that the statute involved has been correctly and consistently construed, that the decision of the Court Below is in accord with the intention of Congress, the prior decisions of this Honorable Court and all other appellate courts construing and applying this statute and that the petition should accordingly be denied.

Respectfully submitted,

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